

# Senate Bill 967

Sponsored by Senators DEMBROW, FREDERICK, STEINER HAYWARD; Representative HERNANDEZ

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that youth offenders sentenced to mandatory minimum terms of imprisonment for certain crimes committed at 15, 16 or 17 years of age are eligible for conditional release hearing if they are in custody of Oregon Youth Authority upon attaining 24 years and six months of age.

Prohibits waiver of conditional release hearing by youth offender who attains 24 years and six months of age.

## A BILL FOR AN ACT

1  
2 Relating to juvenile offender sentencing; creating new provisions; and amending ORS 420A.200 and  
3 420A.203.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 420A.200 is amended to read:

6 420A.200. (1) A person may not continue in the legal or physical custody of the Oregon Youth  
7 Authority after the person attains 25 years of age.

8 (2) Except as otherwise provided in ORS 137.124, [and] 420.011 **and 420A.203**, when a person in  
9 the physical custody of the Oregon Youth Authority under ORS 137.124 attains 24 years and 11  
10 months of age and if the person will not complete the term of imprisonment imposed before the  
11 person attains 25 years of age, the Oregon Youth Authority shall transfer the person to the physical  
12 custody of the Department of Corrections.

13 **SECTION 2.** ORS 420A.203 is amended to read:

14 420A.203. [(1)(a)] (1) This section and ORS 420A.206 apply only to persons who were under 18  
15 years of age at the time of the commission of the offense for which the persons were sentenced to  
16 a term of imprisonment, who committed the offense on or after June 30, 1995, and who were **sen-**  
17 **tenced to a term of imprisonment:**

18 [(A)] (a) [*Sentenced to a term of imprisonment*] Of at least 24 months following waiver under ORS  
19 419C.349, 419C.352, 419C.364 or 419C.370; or

20 [(B)] (b) [*Sentenced to a term of imprisonment*] Of at least 24 months under ORS 137.707 (5)(b)(A)  
21 or (7)(b).

22 (2)(a) **When a person described in subsection (1) of this section attains 24 years and six**  
23 **months of age while in the physical custody of the Oregon Youth Authority and will not**  
24 **complete the sentence imposed before the person attains 25 years of age, the sentencing**  
25 **court shall determine what further commitment or disposition is appropriate as provided in**  
26 **this section. No more than 120 days and not less than 60 days before the person attains 24**  
27 **years and six months of age, the Oregon Youth Authority shall file in the sentencing court**  
28 **a notice and request that the court set a time and place for the hearing required under this**  
29 **paragraph. The Oregon Youth Authority shall serve the person with a copy of the notice and**  
30 **request for a hearing on or before the date of filing. Upon receiving the notice and request**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 **for a hearing, the sentencing court shall schedule a hearing for a date not more than 30 days**  
2 **after the person attains 24 years and six months of age or a later date agreed upon by the**  
3 **parties. The hearing described in this paragraph may not be waived by a person described in**  
4 **subsection (1) of this section at any time.**

5 (b) When a person described in [paragraph (a)] **subsection (1)** of this [subsection] **section** has  
6 served one-half of the sentence imposed, the sentencing court shall determine what further commit-  
7 ment or disposition is appropriate as provided in this section. [As used in this subsection and sub-  
8 section (2) of this section, "sentence imposed" means the total period of mandatory incarceration  
9 imposed for all convictions resulting from a single prosecution or criminal proceeding not including  
10 any reduction in the sentence under ORS 421.121 or any other statute.]

11 [(2)(a)] No more than 120 days and not less than 60 days before the date on which a person has  
12 served one-half of the sentence imposed, the Oregon Youth Authority or the Department of Cor-  
13 rections, whichever has physical custody of the person, shall file in the sentencing court a notice  
14 and request that the court set a time and place for the hearing required under this [section] **para-**  
15 **graph**. The youth authority or department shall serve the person with a copy of the notice and re-  
16 quest for hearing on or before the date of filing.

17 [(b)] Upon receiving the notice and request for a hearing [under paragraph (a) of this  
18 subsection], the sentencing court shall schedule a hearing for a date not more than 30 days after the  
19 date on which the person will have served one-half of the sentence imposed or such later date as  
20 is agreed upon by the parties.

21 (c) The court shall notify the following of the time and place of [the] **a hearing scheduled under**  
22 **this subsection:**

23 (A) The person and, **if the person is under 18 years of age**, the person's parents;

24 (B) The records supervisor of the correctional institution in which the person is incarcerated;  
25 and

26 (C) The district attorney who prosecuted the case.

27 (d) The court shall make reasonable efforts to notify the following of the time and place of the  
28 hearing:

29 (A) The victim and, **if the victim is under 18 years of age**, the victim's parents or legal  
30 guardian; and

31 (B) Any other person who has filed a written request with the court to be notified of any hear-  
32 ing concerning the transfer, discharge or release of the person.

33 (3) In a hearing under this section:

34 (a) The person and the state are parties to the proceeding.

35 (b) The person has the right to appear with counsel. If the person requests that the court ap-  
36 point counsel and the court determines that the person is financially eligible for appointed counsel  
37 at state expense, the court shall order that counsel be appointed.

38 (c) The district attorney represents the state.

39 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-  
40 ceeding.

41 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the  
42 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within  
43 a reasonable time before the hearing, as determined by the court, the person must be given the op-  
44 portunity to examine all reports and other documents concerning the person that the state, the  
45 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by

1 the court at the hearing.

2 (f) Except as otherwise provided by law or by order of the court based on good cause, the person  
3 must be given access to the records maintained in the person's case by the Oregon Youth Authority  
4 and the Department of Corrections.

5 (g) The person may examine all of the witnesses called by the state, may subpoena and call  
6 witnesses to testify on the person's behalf and may present evidence and argument. The court may  
7 permit witnesses to appear by telephone or other two-way electronic communication device.

8 (h) The hearing must be recorded.

9 (i) The hearing and the record of the hearing are open to the public.

10 (j) The question to be decided is which of the dispositions provided in subsection (4) of this  
11 section should be ordered in the case.

12 (k) The person has the burden of proving by clear and convincing evidence that the person has  
13 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to  
14 the safety of the victim, the victim's family or the community and that the person would comply with  
15 the release conditions.

16 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each  
17 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-  
18 sitions:

19 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,  
20 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the  
21 person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

22 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the  
23 court may order, if the court finds that the person:

24 (i) Has been rehabilitated and reformed;

25 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and

26 (iii) Will comply with the conditions of release.

27 (b) In making the determination under this section, the court shall consider:

28 (A) The experiences and character of the person before and after commitment to the Oregon  
29 Youth Authority or the Department of Corrections;

30 (B) The person's juvenile and criminal records;

31 (C) The person's mental, emotional and physical health;

32 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of the  
33 criminal act for which the person was convicted and sentenced;

34 (E) The manner in which the person committed the criminal act for which the person was con-  
35 victed and sentenced;

36 (F) The person's efforts, participation and progress in rehabilitation programs since the person's  
37 conviction;

38 (G) The results of any mental health or substance abuse treatment;

39 (H) Whether the person demonstrates accountability and responsibility for past and future con-  
40 duct;

41 (I) Whether the person has made and will continue to make restitution to the victim and the  
42 community;

43 (J) Whether the person will comply with and benefit from all conditions that will be imposed if  
44 the person is conditionally released;

45 (K) The safety of the victim, the victim's family and the community;

1 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-  
2 ment of Corrections; and

3 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-  
4 thority, the Department of Corrections or the person.

5 (5) The court shall provide copies of its disposition order under subsection (4) of this section to  
6 the parties, to the records supervisor of the correctional institution in which the person is  
7 incarcerated and to the manager of the institution-based records office of the Department of Cor-  
8 rections.

9 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-  
10 pellate court's review is limited to claims that:

11 (a) The disposition is not authorized under this section;

12 (b) The court failed to comply with the requirements of this section in imposing the disposition;

13 or

14 (c) The findings of the court are not supported by substantial evidence in the record.

15 (7) **As used in this section, "sentence imposed" means the total period of mandatory**  
16 **incarceration imposed for all convictions resulting from a single prosecution or criminal**  
17 **proceeding not including any reduction in the sentence under ORS 421.121 or any other**  
18 **statute.**

19 **SECTION 3. The amendments to ORS 420A.200 and 420A.203 by sections 1 and 2 of this**  
20 **2017 Act apply to acts committed on or after the effective date of this 2017 Act.**

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